IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISIDICTION

WRIT PETITION NO.961 OF 2005

Shri.Vijay Kashinath Tetambe ..Petitioner

Vs.

State of Maharashtra and Anr. ..Respondents

...

Mr.S.S.Pakale for Petitioner
Mr.M.H.Solkar AGP for Respondent no.1

...

CORAM : B.H.MARLAPALLE,J.
DATE : MARCH 4,2005

P.C.:

1. Heard Mr.Pakale, the learned counsel for the petitioner who is the defendant in RCS No. 92 of 2004. In the said suit, the plaintiff had submitted an application at Exh.20 on or about 4.11.2004 for appointment of Taluka Inspector of Land Records to visit the suit property and draw a sketch regarding the alleged encroachment. By an order dated 24.1.2005 the trial Court was pleased to allow the said application and hence, this petition.

2. Mr.Pakale referred to the decision of this Court in the case of *Sanjay Namdeo Khandare Vs. Sahebrao Kachru Khandare and others reported in 2001(2) Mh.L.J. 959*. There can be no dispute that the Court Commissioner cannot be appointed to collect the

evidence regarding the possession over the suit property when the application for temporary injunction is still pending before the trial Court. In the instant case, such is not an issue. In his plaint, the plaintiff had contended that the defendant had encroached upon his plot of land admeasuring 2 gunthas and encroachment was to the extent of 200 Sq.Mts. The suit plot is located in City Sy.No. 5479. The defendant filed his written statement and stated inter alia, that from survey no.220/A, Hissa No.2A, 2/1, plot admeasuring 1.66 H. was purchased by him by registered sale deed dated 18.4.2001 from the original landlord by name Shri.Sudesh Suresh Gadre and the said land was in his continuous possession. The plaintiff in his application dated 4.11.2004 based on the averments made in the written statement, pointed out that survey no.220/A, Hissa No.2/A, 2/1, is not part and parcel of City Survey No. 5479 and that on the suit land, there was a hut standing which was demolished by the defendant while encroaching upon about 200 Sq.Mts. of area. The application therefore, prayed for the appointment of Taluka Inspector of Land Records to visit the spot and draw the map including the demolished hut if existing in any part. This was not an application for collecting the evidence and it was intended to bring on record the map indicating the correct survey numbers and the demarcation of the

land purchased by the defendant and the suit land. This was not an application to collect the evidence regarding possession and therefore, the decision relying upon, does not support case of the defendant.

3. Under such circumstances, no interference is called for in the impugned order and hence, Writ Petition is rejected summarily.

[B.H.MARLAPALLE,J.]